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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

HDMI LICENSING ADMINISTRATOR,  
INC.,

Plaintiff and Counterclaim  
Defendant,

v.

AVAILINK INC.,

Defendant and Counterclaimant.

Case No. 4:22-cv-6947-HSG

**DECLARATION OF  
VINCENT FILARDO, JR., ESQ.  
IN SUPPORT OF DEFENDANT'S  
OPPOSITION TO PLAINTIFF'S MOTION TO  
RESCHEDULE CASE MANAGEMENT  
CONFERENCE AND HEARING ON MOTION  
TO DISMISS PURSUANT TO LOCAL RULE  
6-3**

Complaint Filed: November 7, 2022  
Counterclaims Filed: September 1, 2023

1 I, Vincent Filardo, Jr., declare as follows:

2 1. Defendant filed its partial Motion to Dismiss (“MTD”) on April 12, 2023. *See* ECF  
3 No. 30.

4 2. The MTD seeks to dismiss Plaintiff’s claims for (i) direct trademark infringement,  
5 (ii) contributory trademark infringement, and (iii) federal unfair competition. *Id.*

6 3. Plaintiff’s Opposition was filed on April 26, 2023 (*see* ECF No. 39). Defendant’s  
7 reply brief was filed on May 3, 2023 (*see* ECF No. 40). The MTD has been fully briefed since  
8 May 3, 2023.

9 4. The MTD was originally scheduled to be heard on July 20, 2023, however, the  
10 parties agreed to adjourn the hearing to provide additional time to mediate. *See* ECF No. 43.

11 5. The MTD was rescheduled to be heard on July 27, 2023. *See* ECF No. 44.

12 6. The parties appeared for an in-person mediation in San Jose, California on July 12,  
13 2023.

14 7. Plaintiff apparently did not appear with authorized representatives, as its  
15 representatives were incapable of responding to Defendant’s settlement proposal.

16 8. Instead, Plaintiff informed Defendant that HDMI’s “founders” would need to  
17 discuss the offer at a scheduled August 8, 2023 meeting.

18 9. In order to provide the founders time to discuss the settlement proposal, Plaintiff  
19 requested Defendant’s consent to adjourn the MTD hearing and Case Management Conference  
20 until October 2023. *See* ECF No. 46.

21 10. Based on Plaintiff’s representations, Defendant in good faith agreed to Plaintiff’s  
22 request.

23 11. At Plaintiff’s further request, Defendant also agreed at mediation to postpone the  
24 filing of its Answer and Counterclaims until Plaintiff had an opportunity to respond to the  
25 settlement proposal.

26 12. A draft copy of the Counterclaims (which is substantially similar to the version  
27 filed with the Court) was produced to Plaintiff prior to mediation.  
28

1           13.     On August 22, 2023, Plaintiff informed Defendant that its founders had – at their  
2 August 8 meeting – wholly rejected Defendant’s settlement proposal.

3           14.     Defendant filed its Counterclaims on September 1, 2023. *See* ECF No. 49.

4           15.     On September 8, 2023, Plaintiff requested an additional 30 days to respond to the  
5 Counterclaims.

6           16.     In making its request, Plaintiff did not ask for Defendant’s consent to adjourn the  
7 MTD hearing.

8           17.     Nor did it inform the Court in its application for extension that the requested  
9 extension would further delay the proceedings. *See* ECF No. 50.

10          18.     To the contrary, Defendant added specific language to the stipulation clarifying that  
11 by agreeing to extend Plaintiff’s time to respond, the parties were not seeking to extend the hearing.  
12 Attached hereto as ***Exhibit A*** is a true and correct copy of Defendant’s track changes to the draft  
13 stipulation originally prepared by Plaintiff.

14          19.     Plaintiff agreed to this language at the time of filing. *See* ECF No. 50.

15          20.     Less than a week later, Plaintiff requested to adjourn the MTD hearing.

16          21.     On September 19, 2023, I responded to Plaintiff’s request by initially setting forth  
17 the above series of events and then responding that “[a]t this juncture the hearing on the MTD and  
18 CMC will be delayed for nearly 3 months. HDMI’s putative motion to dismiss Availink’s  
19 Counterclaims is not a reasonable basis to further delay the proceedings and the requested delay is  
20 not supported by federal practice and procedure. Availink disagrees that it is necessary or would  
21 be efficient to further postpone.”

22                 I declare under penalty of perjury that the foregoing is true and correct.

23                 Dated: September 25, 2023

**KING AND WOOD MALLESONS LLP**

/s/ Vincent Filardo, Jr.

VINCENT FILARDO, JR.  
(admitted pro hac vice)

*Attorneys for Defendant and  
Counterclaimant, Availink Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify the on September 25, 2023, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to the email addresses registered in the CM/ECF system.

Dated: September 25, 2023

**KING AND WOOD MALLESONS LLP**

/s/ Vincent Filardo, Jr.

VINCENT FILARDO, JR.

(admitted pro hac vice)

*Attorneys for Defendant and  
Counterclaimant, Availink Inc.*